Award No. 3737
Docket No. DC-3708

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

CHICAGO AND EASTERN ILLINOIS RAILROAD

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 351, for and in behalf of Francis Davis, et al., that they shall be paid the difference between what they were paid as Waiters and what they should have been paid as Waiters-in-Charge account of Carrier assigning Dining Car Stewards to Waiter-in-Charge positions, Trains Nos. 88-89 and Nos. 97-98 on several round trips during the period from October 17, 1946, to October 31, 1946.

EMPLOYES' STATEMENT OF FACTS: Prior to October 17, 1946, regularly assigned relief waiters-in-charge had bid in and were awarded regularly assigned positions thus creating two (2) vacancies for the position of relief waiter-in-charge.

On October 16, 1946, Bulletin was issued and posted describing the two (2) relief waiter-in-charge vacancies and notifying the employes affected that bids would be received up to and including October 22nd, 1946.

On October 17, Claimant Davis arrived Chicago, upon completion of his then regularly assigned tour of duty as Dining Car Waiter. Upon such arrival he was notified by Carrier that upon the expiration of his four (4) day relief, he (Claimant Davis) could then take his vacation. Combining relief and vacation together Claimant Davis would be off duty for ten (10) days. Before leaving upon this relief and vacation period Claimant Davis placed bid for the advertised vacancies of Relief Waiter-in-Charge.

While Claimant Davis was thus off duty, Carrier in order to afford relief to other regularly assigned waiters-in-charge, thereupon assigning Dining Car Stewards, who hold no right whatsoever under the current agreement governing waiters-in-charge, to perform the relief work.

Immediate protest was made to the Carrier but the complained of practice continued until Claimant Davis returned to service in October 28, 1946. Carrier contends that Claimant Davis was not qualified to perform Waiter--in-Charge work prior to October 28, 1946, on which date he began student trips with other experienced waiters-in-charge, as a result of Carrier's notice to him that he was successful bidder on the advertised positions of relief waiter-in-charge.

POSITION OF EMPLOYES: Effective March 1, 1943, the parties hereto executed an agreement which contained the following rules:

under the circumstances here involved, it would have been necessary to let the cars go out without a qualified man in charge.

Under the circumstances, the Carrier contends that the claim of Francis Davis for the difference between the rate paid as Waiter and the rate of Waiter-in-Charge positions for the period October 17th to 31st inclusive, is without merit, and we respectfully request that the claim be declined.

With regard to the claim filed in behalf of certain unidentified employes whom it is alleged were aggrieved, in the absence of any definite knowledge as to the facts or circumstances surrounding each case, the Carrier can only contend that on dates stewards were used to relieve regularly assigned Waiters-in-Charge, there were no qualified Waiters-in-Charge available. In this connection, however, we must reiterate our previous objection that only the claim of Francis Davis has been progressed on the property and we must protest any award in favor of unidentified claimants wherein the Carrier has not had an opportunity to examine the facts, nor render decision thereon.

Under the circumstances the Carrier respectfully submits and requests that the claim be denied.

OPINION OF BOARD: This is a claim of the Joint Council Dining Car Employes in behalf of Francis Davis, et al. The basis for the claim is the contention that the Carrier used Dining Car Stewards, employes not covered by their agreement, as waiters-in-charge.

The record shows that the Carrier violated the Scope of the parties' agreement on three occasions during the period commencing on October 24, 1946, and continuing through and inclusive of November 1, 1946, when it used Dining Car Stewards, employes not covered by the agreement, as waiters-in-charge to relieve regularly assigned employes of the latter class.

The record discloses that on October 16, 1946, all relief waiters-in-charge had been assigned to regular positions. On that date a bulletin was issued and posted advising that bids would be received, up until October 22, 1946, for the position of relief waiter-in-charge.

On October 17, 1946, claimant, Francis Davis, a regularly assigned pantryman, placed his bid for the vacancy. On the same day Davis commenced a four day relief period. This was immediately followed by a six day vacation, from which he returned on October 27, 1946.

On October 25, 1946, which was within five days after October 22, 1946, and in accordance with the provisions of Rule Art. II (f) of the agreement, Carrier notified Davis that he was the successful bidder for the position of relief waiter-in-charge and instructed him to report for duty on October 28, 1946, to begin his student trips. This he did and from October 28, 1946, to November 6, 1946, inclusive, he served in this capacity and was paid for this service at the regular waiter-in-charge rates.

Under these facts we do not think that Claimant Davis was either qualified or available so as to be entitled to recover upon the claim here made.

While the claim, as progressed on the property, was primarily in behalf of Francis Davis it did present the issue "that stewards should not have been used to relieve waiters-in-charge." In order to avoid the necessity of additional claims being filed we think this language broad enough to have the question here determined as to other employes who have been adversely affected thereby. See Award 3687.

As previously stated, the Carrier violated the Scope of the Agreement. As to the individual employes who have been adversely affected by the acts of the Carrier and the extent of their rights because thereof we do not here determine, as it has not been sufficiently brought out in the record. What we do determine is that any employes covered by the agreement, who have been adversely affected by reason of the violation, have a right to recover whatever they may be entitled to under the rules of the parties' agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the agreement.

AWARD

Claim denied as to Francis Davis but sustained as to the rights of employes under the agreement, who have been adversely affected by reason of the violation, to recover.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1947.